torney Fees (A. 17).[1] This petition requested that the court enforce a written contingent-fee agreement that petitioner and his wife had entered into with his attorney, Mr. Allen Sharp, on May 12, 1964. That agreement (A. 23) granted counsel a contingent fee of 40 percent of accrued benefits and further provided that the amount would be increased to 50 percent if appeal proved necessary. The limitations on attorney's fees established in Section 206(b)(1), *supra*, p. 2, were said not to apply because the agreement and most of Mr. Sharp's work antedated July 30, 1965, the effective date of the statute. It appeared from the computation of past-due benefits set forth in the petition that the parties sought approval of a fee of 40 percent of the total of the past-due benefits payable to petitioner, his wife, and their two children.

On March 14, 1966, the district court entered an order awarding Mr. Sharp a fee of 25 percent of the past-due benefits payable to petitioner[2] (A. 26–28). The court declined to enforce the agreement for employment, holding that the limitations of Section 206 (b)(1) of the Social Security Act overrode the agreement.

Petitioner appealed, raising only the question of the proper attorney's fee. He contended that even if the statute applied to this case the fee under Section 206 (b)(1) should have been measured by the benefits due

[1] In the interim, respondent had noticed, and then voluntarily dismissed, an appeal.

[2] Such benefits amounted to $3,744.80, resulting in an attorney's fee of $936.20.

his wife and children as well as those due petitioner himself.[3]

The court of appeals affirmed the fee award of the district court (A. 29–36). It held that Section 206(b)(1) was controlling,[4] that the maximum permissible fee was 25 percent of past-due disability benefits due petitioner, and that past-due benefits payable to his wife and children—whose benefit payments had been resumed without litigation (A. 24–25)—were not chargeable with any attorney's fees.[5]

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[3] Past-due benefits payable to petitioner's dependents amounted to $4,752.10 (A. 24), so that a fee of 25 percent of accrued benefits payable to petitioner and his dependents would be $2,124.02.

[4] Petitioner does not reassert here his contention below that the contingent fee contract, rather than Section 206(b)(1), controls.

[5] The procedural situation is somewhat unusual. Raymond Hopkins, the social security claimant is the petitioner in this Court, and the Secretary of Health, Education, and Welfare is the respondent. Yet, the conflicting financial interests are those of petitioner and Allen Sharp, his lawyer. Mr. Sharp appears here as counsel for the petitioner, although he is really representing himself. Counsel for the Secretary of Health, Education, and Welfare, though nominally appearing for him as respondent, are, in substance, advancing arguments that inure to the benefit of the petitioner, Raymond Hopkins.

In our view, any seeming lack of controversy is purely formal. The basic case in the United States District Court for the Northern District of Indiana was brought by Raymond Hopkins against the Secretary of Health, Education, and Welfare. The present case arises out of a collateral application appropriately made in connection with that case. The case has been conventionally entitled in the same way as the main case in the District Court, but the essential nature of the controversy here is clear. Although the respondent Secretary of Health, Education, and Welfare appears to be on the same side of the case as the petitioner, he is in substance appearing to maintain the

SUMMARY OF ARGUMENT

The sole question in this case is the proper determination of the maximum fee that Section 206(b)(1) of the Social Security Act allowed the district court to award counsel for his successful representation of petitioner in securing reversal of respondent's discontinuance of petitioner's disability payments. The statute requires that the fee not exceed "25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment." The word "claimant" refers only to the plaintiff. The plaintiff is the only person on whose behalf the court renders judgment, whom the attorney has "represented before the court" and who becomes "entitled" to money by reason of the court's judgment. Therefore, the court below correctly decided that the maximum fee is to be measured by the past benefits due the claimant himself, and may not include amounts attributable to benefits that the claimant's dependents may receive as a result of the court judgment together with proof that they satisfy the other statutory requirements of age and relationship to the claimant.

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integrity of the system which he is charged to administer as against the appropriately presented claim of the petitioner's lawyer. Comparable appearances have been made, for example, in cases involving fees for representing claimants under government life insurance policies. *E.g.*, *Moss* v. *United States*, 311 F. 2d 462 (C.A. 2), certiorari dismissed, 374 U.S. 819; cf. *General Accident Fire & Life Assur. Corp.* v. *Donovan*, 251 F. 2d 961 (C.A. D.C.).

This result accords with the congressional purpose of limiting attorneys' fees, and thereby maximizing benefits to claimants. It is notable that Congress, in this unambiguous statute, did not provide that attorneys' fees may rest on past amounts due dependents who do not and need not litigate their derivative claims. Congress could hardly have intended to provide a larger fee for the married claimant who receives the same legal services as the single claimant. Moreover, the result below provides a maximum fee that is fair and in keeping with fee limitations established in other legislation.

The Fourth Circuit's express rejection (see *Redden* v. *Celebrezze,* 370 F. 2d 373) of a "literal interpretation" of the statute is seemingly based upon the view that it would be sound policy to follow a more flexible standard. We submit that the statute provides no basis for such a reading, and that the effect of the Fourth Circuit's approach is to substitute that court's preference for the policy that the Congress adopted.

ARGUMENT

SECTION 206(B)(1) OF THE SOCIAL SECURITY ACT LIMITS AN ATTORNEY'S FEE TO 25 PERCENT OF PAST BENEFITS DUE TO THE CLAIMANT HIMSELF

1. The sole question in this case is the determination of the maximum fee that Section 206(b)(1) of the Social Security Act allowed the district court to award the attorney, Mr. Sharp, for his successful representation of petitioner in this case. The statute requires that the fee not exceed "25 percent of the total of the past-due benefits to which the claimant

is entitled by reason of such judgment * * *." The key word is "claimant." Does it refer, as the court below and the Sixth Circuit[6] have held, only to the person who successfully appears before the court as plaintiff? Or does it, as the Fourth Circuit has ruled,[7] include others who, because of a dependency relationship, may claim benefits derivative from and contingent upon the plaintiff's.

The word "claimant" appears twice in Section 206(b)(1)—each time in the first sentence. The context of the initial reference gives a clear definition of the term. The language is: "Whenever a court renders a judgment favorable to a claimant under this sub-chapter who was represented before the court by an attorney * * *." This clause describes three characteristics of the "claimant": he is the person on whose behalf the court rendered judgment, the one who was "before the court" and the one whom the attorney seeking a fee has "represented before the court."

Only a plaintiff can satisfy such a description; a non-party cannot. The plaintiff's dependents, if they are not joined as parties, are not before the court, have not received a judgment, and have not been represented in court.

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[6] *Sims* v. *Gardner*, 378 F. 2d 70, petition for certiorari pending, No. 386 Misc., this Term.

[7] *Redden* v. *Celebrezze*, 370 F. 2d 373 (C.A. 4). The Fifth Circuit in one case, *Alsobrooks* v. *Gardner*, C.A. 5, No. 22,587, petition for rehearing pending, awarded an attorney a fee of 25 percent of the past benefits due a claimant and his dependents. The court deferred to another pending case, *Gardner* v. *Ramirez*, C.A. 5, No. 24,748, the question of the proper meaning of Section 206(b)(1).

The second use of the word "claimant" is in the clause that sets a limit to the attorney's fees the court may award. This limit is measured by "the past-due benefits to which the claimant is entitled by reason of such judgment * * *." The essential word of this clause is "entitled." In legal usage one is "entitled" to money only if he has an absolute and unqualified right to it. Only the plaintiff becomes "entitled" to money "by reason of such judgment." Moreover, it is clear that "such judgment" refers to "a judgment favorable to a claimant." The only judgment rendered in this case provided for payments "to the plaintiff." (A. 3, 16.) It is true that a possible consequence of such a judgment is the payment of past-due benefits to the plaintiff's dependents. But the judgment by itself does not create the right to the money. It is but one of three essential factual elements of the dependents' right to money. "This judgment is certainly helpful in paving the way for the payment of benefits to the dependents, but the dependents must still satisfy the Secretary as to their relationship to the insured and other statutory requirements. 42 U.S.C. § 402(b)–(h)." *Sims* v. *Gardner, supra,* at p. 72. Because the dependents cannot receive money unless they prove these additional requirements of relationship and age, they cannot become "entitled" to their money "by reason of such judgment."

Petitioner was the only party plaintiff in this case. He, but not his wife and children, appeared before the court. He alone was there represented by Mr. Sharp. It is true, as the record shows (A. 24–25),

that the past benefits due to his wife and children were paid at the same time as petitioner's. But petitioner's judgment was not the only reason for this resumption; respondent also had to be satisfied that Mrs. Hopkins and the children had the requisite relationship to petitioner and were of the requisite ages—facts which, in this particular case, had been established earlier. Neither Mrs. Hopkins nor the Hopkins' children could be a "claimant" to whom Section 206(b)(1) refers.

2. This result is in accord with the legislative purpose underlying Section 206(b) and the general scheme of the Social Security Act. Section 206(b) was added to the Act in 1965 at the request of the Secretary of Health, Education and Welfare. The Secretary's overriding purpose in proposing the legislation was to protect Social Security Act claimants from unduly large fees that some attorneys had been charging under contingent fee agreements. Hearings, H.R. 6675, Part 1, Senate Committee on Finance, 89th Cong., 1st Sess., at p. 513. In accepting the Secretary's proposed amendment, the Senate Finance Committee explained the purpose of the provision as follows (S. Rep. No. 404, Part 1, 89th Cong., 1st Sess., at p. 122):

> It has come to the attention of the committee that attorneys have upon occasion charged what appear to be inordinantly large fees for representing claimants in Federal district court actions arising under the social security program. Usually, these large fees result from a contingent-fee arrangement under which the

> attorney is entitled to a percentage (frequently one-third to one-half) of the accrued benefits. Since litigation necessarily involves a considerable lapse of time, in many cases large amounts of accrued benefits, and consequently large legal fees, are payable if the claimant wins his case.
>
> The committee bill would provide that whenever a court renders a judgment favorable to a claimant, it would have express authority to allow as part of its judgment a reasonable fee, not in excess of 25 per cent of accrued benefits, for services rendered in connection with the claim; no other fee would be payable. * * *

This concern with restricting attorney's fees reflects, of course, the overall purposes of the Social Security Act—to provide maximum benefits to persons having substantial needs. As the Sixth Circuit observed in *Sims* v. *Gardner, supra,* at p. 72, "[a]ttorneys' fees in this area * * * cannot be viewed in a vacuum, but must be examined in relation to the needs of the claimants." Congress obviously recognized that the larger an attorney's fee is, the lesser is the benefit to a person in need. Its objective was to limit the fee and enlarge the benefit.

Congress was undoubtedly aware that some claimants of Social Security benefits have beneficiaries who may receive benefits as the result of the claimant's success in court, if they show the proper additional qualifications. And Congress must have been equally aware of the fact that the principal claimant, and none of his dependents, is the party who usually has a justiciable controversy with the Secre-

tary, so that the dependents would not ordinarily have the standing to appear as plaintiffs on their own behalf.[8] Congress could readily have provided, had it chosen, that the attorney's fees may rest on past amounts due to those not before the court and who need not pursue litigation to secure their derivative benefits. The absence of any reference in Section 206 (b)(1) to dependents' benefits justifies only one inference—that the limit Congress sought to place on attorney's fees is to be measured only by the past benefits due the claimant, and not by those his dependents receive.

It would, in addition, be anomalous if the maximum fee were to fluctuate fortuitiously, depending on whether the applicant has a wife or children who are of the proper age to qualify for dependency benefits. Congress made clear its concern with the fact that fees under the contingent arrangements in use before 1965 varied more with the lapse of time for which past

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[8] We disagree with the Fourth Circuit's suggestion in *Redden* that our reading of the statute is subject to "universal avoidance" by resort to the simple expedient of joining claimant's dependents as coplaintiffs. The Sixth Circuit correctly concluded in *Sims* (378 F. 2d at 72):

> [O]nly if the attorney is required to raise in the district court such issues as the relationship of a dependent to the insured should the dependent's benefits be considered "benefits to which the claimant is entitled by reason of" the judgment of the court.

Although, as the Fourth Circuit noted, Section 205(b) allows a dependent to be heard on the merits of the claimant's application for payments, and the dependent, through Section 205(g), may appeal to the courts from a denial of such an application, such an appeal does not deal with such rights as the dependent might have.

benefits accrued than with the legal services rendered (see p. 10–11, *supra*). The presence or absence of dependents has even less influence on the nature and quality of the lawyer's services than does the lapse of time. As the court below suggested, it is most unlikely that Congress intended that in a case like this "the maximum fee should be more than twice as large as it would have been if Mr. Hopkins happened to be single." (A. 36.)

3. Nor does the result below place such a low limit on fees as to suggest that Congress had something higher in mind. The fee is—as Congress must have known—for representation in proceedings that are, by statute, summary in nature. There is neither discovery nor an evidentiary hearing. The record is the one already adduced in administrative proceedings. Disposition is necessarily on motion for summary judgment. See Section 205(g) of the Act, 42 U.S.C. 405(g). Experience shows that the fees have not been insubstantial.[9] These factors all militate in favor of the literal reading of the statute we urge here—one that would nonetheless be as or more generous than fees allowed under other comparable statutes.[10]

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[9] Respondent's records disclose 292 cases in which the courts have allowed fees under section 206(b)(1), using as the base past benefits due to only the claimant. In 36 cases, about 12 per cent of the total, the fee has been under $500; in 133, or about 46 per cent, of the cases, the fee has been between $500 and $999; 90, or slightly less than a third, of the cases, the fee has been between $1000 and $1499. The remaining fees have been $1500 or more.

[10] See 38 U.S.C. 784(g) (soldier's or veterans government life insurance policies, or United States government life insurance;

This is not to say that an attorney may not secure a fee based upon past benefits due a claimant's dependents. Such a dependent must apply for benefits; they do not flow merely from the approval of the husband's own application. If the Secretary agrees that the dependent qualifies, the dependent has no controversy with the Secretary. In such a case the dependent would need an attorney at most to prepare and file the appropriate documents. If the Secretary disputes either the claim of dependency or the dependent's age, there may well be need for more substantial legal representation in administrative hearings. Whatever services he renders a dependent, the attorney may apply to the Secretary for an attorney's fee for services in administrative proceedings based on the value of the actual services rendered, see 20 C.F.R. §§ 404.975–404.978, as amended, 32 Fed. Reg. 7751–7752 [11] a fee that only the Secretary may

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10 percent maximum attorneys' fees); International Claims Settlement Act of 1959, 22 U.S.C. 1623(f) (10 percent maximum); American-Japanese Evacuation Claims Act, 50 U.S.C. App. 1985 (10 percent maximum); 25 U.S.C. 70 (Indian Claims Commission) (10 percent maximum); 28 U.S.C. (Supp. II) 2678 (Federal Tort Claims Act; maximum for court representation recently raised from 20 to 25 percent). In New York attorneys' fees in Workmen's Compensation cases have in the past averaged 4.5 percent, see Larson, 2 *Workmen's Compensation Law*, § 83.15, p. 348, and several Workmen's Compensation statutes set a maximum rate ranging from 10 to 25 percent, *id.* at 347, 560–561.

[11] No basis is advanced, and we perceive none, for petitioner's claim (Brief 5–6) that the cited regulations are invalid. Section 206(a) of the Act, 42 U.S.C. 406(a), expressly allows the Secretary to "prescribe the maximum fees which may be charged for [legal] services performed in connection with any claim before the Secretary under this subchapter * * *."

award.[12] And if judicial proceedings are required, he may of course receive a fee pursuant to Section 206(b)(1) of the Act.

On the other hand, to allow the dependent's benefits to form the basis for an attorney's fee for representing only the principal beneficiary would compensate the attorney for services he has not rendered. More than this, it would substantially inhibit the representation of dependents who do have separate controversies with the Secretary. For, were such a measure of fees allowed, the benefits available to the dependents, and therefore the potential fee for any attorney who so represented them, would be lessened.

4. The Fourth Circuit majority, in ruling that the maximum attorney's fee is 25 percent of the combined past-due benefits of the plaintiff and his dependents, did not rest its conclusion on an analysis of the statutory language. On the contrary, it recognized that the "literal interpretation * * * would limit the fee basis to the accrued benefits payable to the claimant on his own behalf, excluding entirely the benefits payable on the claims of dependents." 370 F. 2d at 374.

It based its rejection of the plain meaning of Section 206(b)(1) on its view that the dependents' benefits "inure to the benefit of the husband substantially to the same extent as if they were paid directly to him." 370 F. 2d at 375. We agree that dependents' benefits "inure" to the benefit of the head of the

[12] *Gardner* v. *Menendez*, 373 F. 2d 488 (C.A. 1); *Robinson* v. *Gardner*, 374 F. 2d 949 (C.A. 4). See, also, *Chernock* v. *Gardner*, 360 F. 2d 257 (C.A. 3).

family. That is a natural consequence of a dependency relationship. But this is hardly a justification for rejecting the "literal" reading of the statute in order to expand the base for the attorney's fee—as the Fourth Circuit did (370 F. 2d at 376)—by "adoption of the construction which gives the larger limitation * * *." Congress was as aware as the courts of the economic benefits that payments to dependents confer upon a social security claimant. It chose to limit the fee to 25 percent to the past-due benefits to which the claimant becomes "entitled by reason of such judgment." Contrary to this legislative mandate, the Fourth Circuit expressly recognized that it was adopting a rule that allowed attorneys' fees based on amounts in addition to those encompassed within the statutory language.[13] We submit that this is an unwarranted departure from the statutory language and scheme.[14]

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[13] The court said, "We assume, of course, the absence of any question that the children listed by Redden are his and are dependents." 370 F. 2d 375, n. 3.

[14] In addition, respondent's records show that the district courts have not followed the suggestion of the Fourth Circuit (370 F. 2d at 376) that a fee of the maximum of 25 per cent be the exception rather than the rule. Those records show 26 cases in which district courts, purporting to apply section 206(b)(1), have based a fee on the combined past benefits due the claimant and his beneficiaries. In 18 the fee was set at 25 per cent of the combined benefits; in the others the fee exceeded 15 per cent.

Of the 292 cases that have applied section 206(b)(1) in the manner we urge (see footnote 9 *supra*), the fees in 239 were set at 25 per cent of the past benefits due the claimant; 42 others were above 15 per cent, and only 5 were under 10 per cent.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
EDWIN L. WEISL, JR.,
Assistant Attorney General.
HARRIS WEINSTEIN,
Assistant to the Solicitor General.
MORTON HOLLANDER,
WILLIAM KANTER,
Attorneys.

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